

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DON KUNIT,

Plaintiff and Appellant,

v.

ELENE KUNIT,

Defendant and Respondent.

D051360

(Super. Ct. No. PN28006)

APPEAL from an order of the Superior Court of San Diego County, Richard G. Cline, Judge. Affirmed.

The primary question raised in this appeal is whether a family trust allowed one settlor to quitclaim community real property from the trust to a trust beneficiary without the consent of the other settlor. The probate court determined the trust allowed the transfer as to transferring settlor's community property interest in the property, but not as to the other settlor's community property interest in the property. We affirm the order.

I

John G. Kunit and Ethel L. Kunit (collectively the Kunits, individually John and Ethel)¹ formed the 1994 Kunit Family Trust (original trust). The trust estate included the Kunits' residence in Alpine, which was identified as a community property asset in the trust documents. Upon the death of one spouse, the original trust provided for the trust estate to be divided into a survivor's trust and a bypass trust. Upon the death of the other spouse, the bypass trust estate was to be distributed to the Kunits' three children, Don Kunit (Don), Eugene Kunit (Eugene), and Elene Kunit (Elene). Don was to receive the Kunits' residence in Alpine and the personal property normally kept in it. Eugene and Elene were to receive equal shares of the residue of the bypass trust estate.

Paragraph 3.1 of the original trust provided that during their joint lifetimes, either one of the Kunits could amend, revoke, or terminate the trust as to his or her separate or quasi-community property and as to any community property. However, neither one of them could modify the rights and interest of the other in community property without the other's consent.² Paragraph 3.3 of the original trust further provided that any amendment, revocation, or termination must be made in writing signed by both of the

¹ Most of the individuals involved in this matter share the last name Kunit. For clarity, we refer to these individuals by their first names.

² Paragraph 3.1 states: "During the joint lifetimes of the settlors, any trust created by this instrument may be amended, revoked, or terminated, in whole or in part, by either settlor acting alone, as to any separate and quasi-community property of that settlor and any community property of the settlors. However, any modification of the rights and interest of either settlor in community property during the marriage of the settlors may be made only with the joinder or consent of both settlors."

Kunits, or by the one making the amendment, revocation, or termination. If the writing is signed by only one of the Kunits, a copy of it must be delivered to the other.³

In 2001, while both Kunits were still living, John signed and recorded a quitclaim deed transferring the Alpine residence from the trust to Elene. Don subsequently filed a petition in probate court seeking, among other relief, a determination that the Alpine residence is an asset of the bypass trust estate. Relevant to this appeal, Don argued the transfer of the property to Elene was invalid under paragraphs 3.1 and 3.3 of the original trust because Ethel did not sign the quitclaim deed and the quitclaim deed was never delivered to Ethel.

The probate court interpreted paragraph 3.1 to mean either spouse could amend or revoke the trust as to community property, but the amendment or revocation could not affect the other spouse's rights in the community property without the other spouse's consent. Since there was no evidence Ethel consented to the transfer of the Alpine residence to Elene, the court found the quitclaim deed did not transfer Ethel's community property interest in the residence to Elene. The quitclaim deed only transferred John's community property interest in the residence. In addition, the court found, although John never delivered the quitclaim deed to Ethel as required by paragraph 3.3, John's failure

³ Paragraph 3.3. states: "Any amendment, revocation, or termination of any trust created by this instrument shall be made by written instrument signed by both settlors or by the settlor making the revocation, amendment, or termination, and delivered to the trustee. If the instrument making the revocation, amendment, or termination is signed by only one settlor and the other settlor is living at that time, a copy of the instrument making the amendment, revocation, or termination shall also be delivered to the other settlor. An exercise of the power of amendment substantially affecting the duties, rights, and liabilities of the trustee shall be effective only if agreed to by the trustee in writing."

was legally inconsequential since paragraph 3.3 set no deadline for delivery, Ethel was incapacitated at the time of the transfer, and she died shortly after the transfer.

As to the proper disposition of the remaining trust assets, the court reviewed several sets of documents purporting to amend the original trust. The court found one set of documents bore the Kunits' original, notarized signatures. Two other sets of documents bore John's original, notarized signature and another set of documents bore a signature the court determined was John's. The court further found these documents along with other evidence established the Kunits intended to amend the original trust and revoked its dispositive provisions. Nonetheless, because there was evidence the substantive portion of the amendments had been tampered with, the court was unable to determine the Kunits' disposition plan from the amendments. However, considering all of the evidence before it and applying its equitable powers, the court determined the Kunits' predominant intent was for each child to inherit a roughly equal share of the bypass trust estate. Accordingly, the court determined the residue of the bypass trust estate should be distributed to Don, Eugene, and Elene in equal shares.

II

A

1

On appeal, Don contends, as he did below, the transfer of the Alpine property to Elene was invalid under paragraph 3.1 of the original trust because Ethel did not sign the quitclaim deed. As the probate court's interpretation of paragraph 3.1 did not involve the resolution of credibility issues or conflicts in extrinsic evidence, we review the court's

ruling de novo. (*Estate of Dodge* (1971) 6 Cal.3d 311, 318; *In re Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) "In interpreting the trust instrument, we seek the intent of the trustors as revealed in the document considered as a whole. [Citation.]" (*Estate of Powell, supra*, at p. 1440; Prob. Code, §§ 21102, subd. (a), 21121.) We give the words of the trust instrument their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. (Prob. Code, § 21122.) In addition, we give every expression some effect, rather than render any expression inoperative. (*Id.*, § 21120.)

Here, the first sentence of paragraph 3.1 permitted either spouse to amend, revoke, or terminate the trust as to any community property and the second sentence prohibited one spouse from modifying the other spouse's rights and interest in community property without the other spouse's consent. Giving each sentence effect as we are required to do, we conclude paragraph 3.1 permitted one spouse to unilaterally remove community property from the trust estate as long as the spouse did not deprive the other spouse of the other spouse's rights and interest in the community property without the other spouse's consent. Accordingly, we conclude the probate court correctly found the transfer of the Alpine residence to Elene was valid as to John's community property interest in the residence, but not as to Ethel's community property interest.

Our conclusions are consistent with other provisions in the original trust evidencing the Kunits' intent to protect and preserve community property assets transferred to or from the trust. For example, paragraph 2.2 provides that community property transferred to the trust remains community property. Paragraph 3.4 similarly

provides that community property removed from the trust remains community property. Paragraph 4.4 provides that any income or principal paid to either settlor from trust community property remains community property. Lastly, paragraph 7.20 provides that during the settlors' joint lifetimes, the trustee's power regarding the community property in the trust estate is no greater than that of a spouse under California's community property law.

Our conclusions are also consistent with a recorded abstract of the original trust, which the Kunits certified as being accurate. Specifically, paragraph 3(B) of the abstract provides that, with respect to trust property, the trustee may exercise all rights, powers and privileges of an absolute owner, subject to California's community property laws.⁴

⁴ Although we do not rest our decision on this point, we note our conclusions are further supported by Family Code section 761, subdivisions (a) and (b). Subdivision (a) provides, "[u]nless the trust instrument . . . expressly provides otherwise, community property that is transferred in trust remains community property during the marriage . . . if the trust . . . provides that the trust is revocable as to that property during the marriage and the power, if any, to modify the trust as to the rights and interests in that property during the marriage may be exercised only with the joinder or consent of both spouses." The purpose of this subdivision is to ensure consistency with an Internal Revenue Service Revenue Ruling in order for trust estates containing community property to receive community property income tax treatment. (Cal. Law Revision Com. com., 29C West's Ann. Fam. Code (2004 ed.) foll. § 761, p. 372.)

Subdivision (b) provides, "[u]nless the trust instrument expressly provides otherwise, a power to revoke as to community property may be exercised by either spouse acting alone. Community property . . . that is . . . withdrawn from a trust . . . remains community property unless there is a valid transmutation of the property at the time . . . of withdrawal." This subdivision "establishes the presumption that either spouse acting alone may revoke the trust as to the community property. The statute makes clear, however, that a unilateral revocation does not change the community property character of property received by the revoking spouse." (Cal. Law Revision Com. com., 29C West's Ann. Fam. Code (2004 ed.) foll. § 761, p. 372.)

Don also contends the transfer of the Alpine residence is invalid under paragraph 3.3 of the original trust because John never delivered the quitclaim deed to Ethel. However, as the probate court explained in its order, paragraph 3.3 did not specify a deadline for delivery of the quitclaim deed and Ethel died shortly after John signed the deed. Moreover, as discussed above, under paragraph 3.1 of the original trust the quitclaim deed was only effective as to John's community property interest in the property. Therefore, John's failure to deliver the quitclaim deed to Ethel before she died did not thwart the apparent purpose of paragraph 3.3, which was to protect the rights and interest of one settlor in any community property affected by the other settlor's revocation, amendment, or termination of the trust. In this regard, the probate court correctly determined John's failure to deliver the deed was legally inconsequential.

B

Finally, Don contends the probate court erred in finding Ethel's community property interest in the Alpine residence was part of the residue of the bypass trust estate. Since the original trust provided for Don to receive all of the Alpine residence, he contends he should receive the portion of the residence not transferred to Elene. Similarly, since the original trust provided for the residue of the bypass trust estate to be shared equally between Eugene and Elene, he contends the trial court erred in ordering the residue to be shared equally by all three siblings.

These contentions ignore the probate court's specific findings that the Kunits intended to amend the original trust and revoked its dispositive provisions, that the Kunits' disposition plan could not be determined from the amendments because the amendments had been tampered with, and that other evidence indicated the Kunits intended their children to receive roughly equal shares of the trust estate. These findings have not been challenged in this appeal. Moreover, as these findings required the court to resolve credibility issues and conflicts in extrinsic evidence, we must defer to them as long as there is substantial evidence in the record to support them. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632; *Estate of Verdisson* (1992) 4 Cal.App.4th 1127, 1135.) In this case, we presume the existence of substantial evidence to support the court's findings because Don did not set forth all of the material evidence related to them in his brief nor did he provide an adequate appellate record for us to review them.⁵ (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409-410; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1245-1246.) Since there is substantial evidence to support the court's findings, we conclude the court did not err in determining Ethel's community property interest in the Alpine residence is part of the residue of the bypass trust estate or in determining the Kunits intended the residue should be shared equally by the three siblings.⁶

⁵ The documentary evidence relating to the validity of the amendments is not included in the appellate record.

⁶ One of the issues below was whether George Kingston, Elene's son and the then successor trustee, should also receive an equal share of the bypass trust estate. The

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.

probate court found that neither of the Kunits intended for Kingston to be a trust beneficiary. Kingston appealed the probate court's order, but later dismissed his appeal.